

AMENDED IN ASSEMBLY JULY 2, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE APRIL 30, 2015

SENATE BILL

No. 507

Introduced by Senator Pavley

February 26, 2015

An act to amend Section 6603 of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 507, as amended, Pavley. Sexually violent predators.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility. Under existing law, persons to be evaluated for civil commitment are evaluated by 2 practicing psychiatrists or psychologists designated by the Director of State Hospitals. If both evaluators concur that the person is likely to engage in acts of sexual violence without appropriate treatment and custody, the director is required to forward a request for a petition for commitment to the district attorney or county counsel, who may then file the petition with the court.

Under existing law, if the attorney petitioning for commitment determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the department to perform updated evaluations, which include the review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated. Existing law requires that the department

forward the updated evaluations to the petitioning attorney and to the counsel for the person who is the subject of the commitment hearing.

This bill would require the evaluator performing an updated evaluation to include a statement listing the medical and psychological records reviewed by the evaluator, and would direct the court to issue a subpoena, upon the request of either party to the civil commitment proceeding, for a certified copy of these records. ~~The bill would authorize either party to move to quash the subpoena, in whole or in part, on the ground that a record or portion of a record is not likely to lead to the discovery of admissible evidence regarding whether the person is a sexually violent predator. The bill would authorize the attorneys to use the records in the commitment proceeding, but would prohibit disclosure of the records for any other purpose. The bill would also prohibit the attorney petitioning for commitment from providing access to these records to any 3rd party, including an expert retained or sought to be retained by that attorney, without the consent of the court upon noticed motion.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6603 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 6603. (a) A person subject to this article shall be entitled to a
- 4 trial by jury, to the assistance of counsel, to the right to retain
- 5 experts or professional persons to perform an examination on his
- 6 or her behalf, and to have access to all relevant medical and
- 7 psychological records and reports. In the case of a person who is
- 8 indigent, the court shall appoint counsel to assist him or her, and,
- 9 upon the person's request, assist the person in obtaining an expert
- 10 or professional person to perform an examination or participate in
- 11 the trial on the person's behalf. Any right that may exist under this
- 12 section to request DNA testing on prior cases shall be made in
- 13 conformity with Section 1405 of the Penal Code.
- 14 (b) The attorney petitioning for commitment under this article
- 15 shall have the right to demand that the trial be before a jury.
- 16 (c) (1) If the attorney petitioning for commitment under this
- 17 article determines that updated evaluations are necessary in order
- 18 to properly present the case for commitment, the attorney may

1 request the State Department of State Hospitals to perform updated
2 evaluations. If one or more of the original evaluators is no longer
3 available to testify for the petitioner in court proceedings, the
4 attorney petitioning for commitment under this article may request
5 the State Department of State Hospitals to perform replacement
6 evaluations. When a request is made for updated or replacement
7 evaluations, the State Department of State Hospitals shall perform
8 the requested evaluations and forward them to the petitioning
9 attorney and to the counsel for the person subject to this article.
10 However, updated or replacement evaluations shall not be
11 performed except as necessary to update one or more of the original
12 evaluations or to replace the evaluation of an evaluator who is no
13 longer available to testify for the petitioner in court proceedings.
14 These updated or replacement evaluations shall include review of
15 available medical and psychological records, including treatment
16 records, consultation with current treating clinicians, and interviews
17 of the person being evaluated, either voluntarily or by court order.
18 If an updated or replacement evaluation results in a split opinion
19 as to whether the person subject to this article meets the criteria
20 for commitment, the State Department of State Hospitals shall
21 conduct two additional evaluations in accordance with subdivision
22 (f) of Section 6601.

23 (2) For purposes of this subdivision, “no longer available to
24 testify for the petitioner in court proceedings” means that the
25 evaluator is no longer authorized by the Director of State Hospitals
26 to perform evaluations regarding sexually violent predators as a
27 result of any of the following:

28 (A) The evaluator has failed to adhere to the protocol of the
29 State Department of State Hospitals.

30 (B) The evaluator’s license has been suspended or revoked.

31 (C) The evaluator is unavailable pursuant to Section 240 of the
32 Evidence Code.

33 (D) The independent professional or state employee who has
34 served as the evaluator has resigned or retired and has not entered
35 into a new contract to continue as an evaluator in the case, unless
36 this evaluator, in his or her most recent evaluation of the person
37 subject to this article, opined that the person subject to this article
38 does not meet the criteria for commitment.

39 (d) This section does not prevent the defense from presenting
40 otherwise relevant and admissible evidence.

1 (e) If the person subject to this article or the petitioning attorney
2 does not demand a jury trial, the trial shall be before the court
3 without a jury.

4 (f) A unanimous verdict shall be required in any jury trial.

5 (g) The court shall notify the State Department of State Hospitals
6 of the outcome of the trial by forwarding to the department a copy
7 of the minute order of the court within 72 hours of the decision.

8 (h) This section does not limit any legal or equitable right that
9 a person may have to request DNA testing.

10 (i) Subparagraph (D) of paragraph (2) of subdivision (c) does
11 not affect the authority of the State Department of State Hospitals
12 to conduct two additional evaluations when an updated or
13 replacement evaluation results in a split opinion.

14 (j) (1) Notwithstanding any other law, the evaluator performing
15 an updated evaluation shall include with the evaluation a statement
16 listing all records reviewed by the evaluator pursuant to subdivision
17 (c). The court shall issue a subpoena, upon the request of either
18 party, for a certified copy of these records. The records shall be
19 provided to the attorney petitioning for commitment and the
20 counsel for the person subject to this article. The attorneys may
21 use the records in proceedings under this article and shall not
22 disclose them for any other purpose.

23 ~~(2) Either party may move to quash the subpoena, in whole or~~
24 ~~in part, on the ground that a record or portion of a record is not~~
25 ~~likely to lead to the discovery of admissible evidence regarding~~
26 *This subdivision does not affect the right of a party to object to*
27 *the introduction at trial of all or a portion of a record subpoenaed*
28 *under paragraph (1) on the ground that it is more prejudicial than*
29 *probative pursuant to Section 352 of the Evidence Code or that it*
30 *is not material to the issue of whether the person subject to this*
31 *article is a sexually violent predator, as defined in subdivision (a)*
32 *of Section 6600, or to any other issue to be decided by the court.*
33 ~~If the motion to quash relief is granted, in whole or in part, the~~
34 ~~record or records shall retain any confidentiality that may apply~~
35 ~~under Section 5328 of this code and Section 1014 of the Evidence~~
36 ~~Code.~~

37 ~~(3) This subdivision does not affect any right of a party to object~~
38 ~~to the introduction of evidence that is more prejudicial than~~
39 ~~probative.~~

1 ~~(4) This subdivision does not create any new rights or limitations~~
2 ~~regarding the retention of an expert witness by either party or~~
3 ~~access to records by an expert retained or sought to be retained by~~
4 ~~either party. The attorney petitioning for commitment shall not~~
5 ~~provide access to the records obtained under paragraph (1) to any~~
6 ~~third party, including an expert retained or sought to be retained~~
7 ~~by that attorney, without the consent of the court upon noticed~~
8 ~~motion.~~

9 ~~(5)~~

10 (3) This subdivision does not affect any right of a party to seek
11 to obtain other records regarding the person subject to this article.

12 ~~(6)~~

13 (4) Except as provided in paragraph (1), this subdivision does
14 not affect any right of a committed person to assert that records
15 are confidential under Section 5328 of this code or Section 1014
16 of the Evidence Code.

17 *SEC. 2. Nothing in this act is intended to affect the*
18 *determination by the Supreme Court of California, in People v.*
19 *Superior Court (Smith) (Docket No. S225562), whether an expert*
20 *retained by the district attorney in a proceeding under the Sexually*
21 *Violent Predator Act (Article 4 (commencing with Section 6600)*
22 *of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions*
23 *Code) is entitled to review otherwise confidential treatment*
24 *information under Section 5328 of the Welfare and Institutions*
25 *Code.*